

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)	
)	
ALL METALS PROCESSING CO. SITE)	
264 W. Spazier Ave.)	
Burbank, Los Angeles County, California)	Docket No. 2013-4
)	
PURSUANT TO THE COMPREHENSIVE)	
ENVIRONMENTAL RESPONSE,)	
COMPENSATION, AND LIABILITY ACT)	
42 U.S.C. §§ 9604, 9606, 9607, 9622)	
)	
SETTLEMENT AGREEMENT AND ORDER ON)	Brett and Chris Warner Trust,
CONSENT FOR REMOVAL ACTION BY)	Dated May 31, 2012,
BONA FIDE PROSPECTIVE PURCHASER)	Purchaser

I. INTRODUCTION

1. This Settlement Agreement and Order on Consent for Removal Action by Bona Fide Prospective Purchaser ("Settlement Agreement") is voluntarily entered into by and between the United States on behalf of the Environmental Protection Agency ("EPA") and the Brett and Chris Warner Trust, dated May 31, 2012 ("Purchaser") (collectively, the "Parties") under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601-9675. Under this Settlement Agreement, Purchaser agrees to perform a removal action at or in connection with the property located at 264 W. Spazier Avenue in the city of Burbank, Los Angeles County, California (the "Property"), known as the "All Metals Processing Company Site" or the "Site."

II. JURISDICTION AND GENERAL PROVISIONS

2. This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Sections 104, 106, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606, 9607 and 9622, and delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the undersigned Regional official, and the authority of the Attorney General to compromise and settle claims of the United States.

3. The parties agree that the United States District Court for the Central District of California shall have jurisdiction pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any enforcement action brought with respect to this Settlement Agreement.

4. EPA has notified the State of California (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

5. The Purchaser represents that it is a bona fide prospective purchaser ("BFPP") as defined by Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that it has and will continue to comply with Section 101(40) during its ownership of the Property, and thus qualifies for the protection from liability under CERCLA set forth in Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Property. In view, however, of the complex nature and significant extent of the Work to be performed in connection with the removal action at the Site, and the risk of claims under CERCLA being asserted against Purchaser notwithstanding Section 107(r)(1) as a consequence of Purchaser's activities at the Site pursuant to this Settlement Agreement, one of the purposes of this Settlement Agreement is to resolve, subject to the reservations and limitations contained in Section XVIII (Reservations of Rights by United States), any potential liability of Purchaser under CERCLA for the Existing Contamination as defined by Paragraph 10(i) below.

6. The resolution of this potential liability, in exchange for Purchaser's performance of the Work and reimbursement of certain response costs is in the public interest.

7. EPA and Purchaser recognize that this Settlement Agreement has been negotiated in good faith. Purchaser agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

III. PARTIES BOUND

8. This Settlement Agreement applies to and is binding upon EPA and upon Purchaser and its successors and assigns. Any change in ownership or corporate status of Purchaser including, but not limited to, any transfer of assets or real or personal property shall not alter Purchaser's responsibilities under this Settlement Agreement.

9. Purchaser shall ensure that its contractors, subcontractors, and representatives comply with this Settlement Agreement, and, where appropriate, receive a copy of this Settlement Agreement. Purchaser shall be responsible for any noncompliance with this Settlement Agreement.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

a. "Abandon" shall mean, for purposes of this Settlement Agreement, destruction of a monitoring well, not used for more than one year, pursuant to the procedures and requirements set forth in the California Department of Water Resources' California Well Standards, Bulletin 74-90 (June 1991).

b. "BFPP" shall mean a bona fide prospective purchaser as described in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675.

d. "C.F.R." shall mean U.S. Code of Federal Regulations.

e. "Day" or "day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal or state holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal or state holiday, the period shall run until the close of business of the next working day.

f. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXVI.

g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

h. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

i. "Existing Contamination" shall mean:

i. any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the Effective Date;

ii. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and

iii. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the Effective Date.

j. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

k. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

l. "Oversight Costs" shall mean all direct and indirect costs incurred by EPA or the United States after the Effective Date in monitoring and supervising Purchaser's performance of the Work to determine whether such performance is consistent with the requirements of this Settlement Agreement, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Settlement Agreement, as well as costs incurred in overseeing implementation of the Work.

m. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

n. "Parties" shall mean EPA and Purchaser.

o. "Property" shall mean that portion of the "Site" which is located at 264 W. Spazier Ave. in the City of Burbank, Los Angeles County, California, and is described in Appendix 1 of this Settlement Agreement.

p. "Purchaser" shall mean the Brett and Chris Warner Trust, dated May 31, 2012, 15250 Ventura Blvd., Suite 100, Sherman Oaks, CA 91403, Ph. 818-986-9800.

q. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

r. "Settlement Agreement" shall mean this Settlement Agreement and Order on Consent for Removal Action by Bona Prospective Purchaser and all appendices attached hereto (listed in Section XXIV). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

s. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

t. "RPM" shall mean Remedial Project Manager as defined in 40 C.F.R. § 300.5.

u. "Site" shall mean the All Metals Processing Company Site encompassing approximately 10,000 square feet, located at 264 W. Spazier Ave., Burbank, California, and depicted generally on the map attached as Appendix 2. The Site shall include the Property, and all areas to which hazardous substances and/or pollutants or contaminants from the Property have come to be located.

v. "Site Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

w. "Supervising Contractor" shall mean the principal contractor retained by Purchaser to supervise and direct the implementation of the Work agreed to in this Settlement Agreement and to sign and approve the Final Report submitted concerning such Work.

x. "United States" shall mean the United States of America, and each department, agency, and instrumentality of the United States, including EPA.

y. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous substance" under California Health & Safety Code Section 25316.

z. "Work" shall mean all response actions Purchaser undertakes pursuant to Paragraph 21 of this Settlement Agreement.

V. FINDINGS OF FACT

11. The Site is located at 264 W. Spazier Ave., Burbank, California. The Site is located at the end of a cul-de-sac in a mixed residential and commercial area of Burbank. An open concrete flood control canal is located along the northeast property line. Directly to the east of the Site is an apartment complex. A graphics arts business is next door to the south. A commercial plumbing supply business is across the street to the west. Directly across the flood control channel to the north are single and multiple family residential structures.

12. The lot size is 9,919 square feet. A 6,976 square foot building was constructed on the property in 1957. Metal plating operations appear to have been conducted at the Site since at least the 1970s. According to property records, the property appears to have been purchased in 1978 by Helen Powers. All Metals Processing Company leased the Site from Helen Powers beginning in at least the 1980s and operated a metal plating business there.

13. In 1994, Helen Powers created the Helen L. Powers Revocable Trust ("Trust") and transferred the Property into the Trust. In 2004, EPA inspectors visited the Site and discovered a number of violations of the Resource Conservation and Recovery Act ("RCRA") inside the building. However, the EPA inspectors also noticed hazardous wastes from the All Metals building seeping through the bricks and into the soil outside of the building. During the following three years, EPA attempted to get All Metals to address the contamination found outside the building under the RCRA administrative process. Both All Metals and Helen Powers informed EPA that they lacked the money to deal with the cleanup. In late 2004, Helen Powers transferred the Property out of the Trust and back into her name. She then revoked the Trust on February 18, 2005.

14. Helen Powers died on April 7, 2006, and the Site became part of the Estate of Helen L. Powers. In April 2007, the Estate of Helen L. Powers evicted All Metals for failure to pay rent. The building sat vacant for approximately two months until inspected by the Los Angeles County Fire Department, Health Hazardous Materials Division ("HHMD"). The HHMD discovered thousands of gallons of abandoned metal solutions located within the building and contamination from these solutions outside the building in close proximity to a storm water canal. HHMD contacted EPA's removal program and requested assistance in cleaning up the Site.

15. From June 2007 through December 2007, EPA carried out a time-critical removal action at the Site, pursuant to work detailed in a July 3, 2007 Action Memorandum, that included excavating approximately 3,360 cubic yards of contaminated soil and removing 21,323 gallons of liquid hazardous wastes from the interior of the building for disposal. Because of the extensive contamination of the building and floor and soil below the building, EPA demolished the building and removed it for disposal. A total of 7,075 pounds (470 cubic yards) of hazardous waste solids/debris were removed from the Site. After replacing the excavated contaminated soil with clean soil, EPA placed an asphalt pavement cap over the Site and constructed a security fence around the perimeter of the Site. Total response costs for the Site are in excess of \$2.2 million.

16. The Site currently is vacant, and is still owned by the Estate of Helen Powers. The Site is part of the Glendale Chromium Operable Unit of the San Fernando Valley Area 2 Superfund Site (GCOU). The Glendale Chromium Operable Unit is currently managed by a Remedial Project Manager, who also has authority for any future actions taken at the Site, including any future removal actions. Currently, the only work being carried out by EPA at the Site is periodic monitoring of two groundwater monitoring wells located on the property: AMP-W1, which is located on the northwest end of the Property; and AMP-W3, which is located within the interior of the Property. See Appendix 2. Additional remedial work may be needed in the future pending completion of the remedial investigation/feasibility study (RI/FS) of the Glendale Chromium Operable Unit of the San Fernando Valley Area 2 Superfund Site and issuance by EPA of a Record of Decision (ROD). Currently, the remedial investigation for the GCOU is underway and is expected to be completed in 2013.

17. Purchaser is buying the Property for the purpose of constructing and leasing a building of approximately 5,000 square feet for use consistent with current zoning, including light manufacturing, warehouse space, service or studio use. The building and appurtenant parking lot will provide a cap over any existing soil contamination remaining on the Site. In addition, the Purchaser will abandon groundwater monitoring well AMP-W3, which is located within the footprint of the proposed building, and locate a new monitoring well outside of the southeast end of the new building. See Appendix 2.

18. Purchaser represents, and for the purposes of this Settlement Agreement EPA relies on those representations, that Purchaser has had no prior involvement with the Property or the Site.

VI. DETERMINATIONS

19. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The All Metals Processing Company Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site is identified in the Findings of Fact above, includes hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Purchaser is a "person" as defined by Section 101(21) CERCLA, 42 U.S.C. § 9601(21).

d. The conditions described in Paragraphs 11-17 of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from a facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

e. The Work is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VII. SETTLEMENT AGREEMENT

20. In consideration of and in exchange for the United States' Covenant Not to Sue in Section XVII and the Release and Waiver of Lien in Section XXI, Purchaser agrees to comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VIII. WORK TO BE PERFORMED

21. Purchaser shall perform, at a minimum, the following response actions:

- a. Abandon groundwater monitoring well AMP-W3, subject to EPA approval;
- b. Install a replacement groundwater monitoring well (i.e., proposed well MW #3R) in an alternative location acceptable to EPA;
- c. Subject to approval by EPA, replace the existing asphalt cap across the Property with a new concrete pad over the planned parking lot area in the front portion of the Property along W. Spazier Avenue (including the northeast corner of the Property) and underneath a building planned for construction in the back portion of the Property;
- d. Coordinate with EPA any actions to mitigate potential exposures to volatile organic compounds (VOCs) in indoor air, as determined by EPA to be appropriate; and
- e. If appropriate implement: 1) actions to mitigate potential exposures to VOCs in indoor air; and (2) address any soil disturbances caused by construction of the building and parking lot that could pose a risk to human health.

Purchaser shall perform all actions required by this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the

extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws.

22. Work Plan and Implementation.

a. Within 60 days after the Effective Date, Purchaser shall submit to EPA for approval a draft Work Plan for performing the actions generally described in Paragraph 21 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Purchaser shall submit a revised draft Work Plan within 30 days of receipt of EPA's notification of the required revisions. Purchaser shall implement the Work Plan as approved or modified in writing by EPA in accordance with the schedule approved by EPA. Once approved, approved with modifications, or modified by EPA, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Purchaser shall not commence any Work except in conformance with the terms of this Settlement Agreement. Purchaser shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval or modification pursuant to Paragraph 22.b.

23. Health and Safety Plan. Within 60 days after the Effective Date, Purchaser shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Purchaser shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the response action.

24. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Purchaser shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Purchaser shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Purchaser shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and

Environmental Technology Programs” (American National Standard, January 5, 1995), and “EPA Requirements for Quality Management Plans” (QA/R-2) (EPA/240/B-01/002, March 2001), or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (“NELAP”) as meeting the Quality System requirements.

b. Upon request by EPA, Purchaser shall use a laboratory that meets the requirements of Paragraph 24.a above to analyze samples submitted by EPA for QA monitoring. Purchaser shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Purchaser shall allow EPA or its authorized representatives to take split and/or duplicate samples. Purchaser shall notify EPA not less than 30 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Purchaser to take split or duplicate samples of any samples it takes as part of its oversight of Purchaser’s implementation of the Work.

25. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Purchaser shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the NCP and considering OSWER Directive No. 9360.2-02. At a minimum, the proposal should outline the Purchaser’s plan for maintaining the cap, allowing EPA access to sample the monitoring wells, and if vapor mitigation is needed, for maintaining the appropriate vapor mitigation controls and monitoring the quality of indoor air. Upon EPA approval, Purchaser shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

26. Reporting.

Purchaser shall submit 2 copies of all plans, reports or other submissions required by this Settlement Agreement or any approved work plan. Upon request by EPA, Purchaser shall submit such documents in electronic form to be specified by EPA. All plans, reports, or other submissions required by this Settlement Agreement are subject to approval by EPA.

27. Final Report. Within 60 days after completion of all Work required by this Settlement Agreement, Purchaser shall submit for EPA review and approval in accordance with Section XXV (Notice of Completion) a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in 40 Code of Federal Regulations, Section 300.165, entitled “RPM Reports.” The final report shall include a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the

following certification signed by the Supervising Contractor who supervised or directed the preparation of said report:

“Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

28. Off-Site Shipments.

a. Purchaser shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-State waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the RPM. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Purchaser shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Purchaser shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Purchaser following the award of the contract for the removal action. Purchaser shall provide the information required above as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-Site location, Purchaser shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Purchaser shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. AUTHORITY OF THE REMEDIAL PROJECT MANAGER

29. The RPM shall be responsible for overseeing Purchaser's implementation of this Settlement Agreement. The RPM shall have the authority vested in an On-scene Coordinator by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

X. PAYMENT OF OVERSIGHT COSTS

30. Payment of Sum Certain for Oversight Costs.

a. Purchaser shall pay EPA all Oversight Costs not inconsistent with the NCP in an amount not to exceed "\$20,000 following the Effective Date. On a periodic basis, EPA will send Purchaser a bill requiring payment that includes direct and indirect costs incurred by EPA and its contractors. Purchaser shall make all payments required by this Paragraph to EPA by Fedwire Electronic Funds ("EFT") Transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" and shall reference Site/Spill ID Number 09 QB, and the EPA docket number.

Alternatively, if payment is made by check, payment must be made by official bank check made payable to "EPA Hazardous Substance Superfund." Each check, or a letter accompanying each check, shall identify the name and address of the party making payment, the Site name, Site/Spill ID Number 09 QB, and the EPA docket number for this action, 2013-4, and shall be sent to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

b. In the event that a payment for Oversight Costs is not made within 30 days of Purchaser's receipt of a bill, Purchaser shall pay Interest on the unpaid balance. Interest shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment.

31. The total amount to be paid by Purchaser pursuant to Paragraph 30 shall be deposited by EPA in the Glendale Chromium Operable Unit Special Account to be retained and used to conduct or finance response actions at or in connection with the Glendale Chromium Operable Unit, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

32. At the time of each payment, Purchaser shall send notice that such payment has been made to

Lisa Hanusiak,
Remedial Project Manager
U.S. Environmental Protection Agency

75 Hawthorne Street
San Francisco, CA 94105
hanusiak.lisa@epa.gov

and to:

David Wood
Superfund Accounting (PMD 6)
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105
wood.david@epa.gov

Such notice shall reference the Site/Spill ID Number, 09 QB and EPA docket number 2013-4 for this action.

33. Payment of Oversight Costs Upon Receipt of Periodic Bills. Purchaser shall pay EPA Oversight Costs not inconsistent with the NCP in an amount not to exceed \$20,000 following the Effective Date (hereinafter "Oversight Costs") representing the total cost referenced in Paragraph 30 of the Agreement. If Oversight Costs are incurred, EPA will send Purchaser one or more bills requiring payment of the amount specified above, which includes a summary of the Oversight Costs in the form of a Superfund Cost Summary for Site #09 QB (OU 4), San Fernando Valley Area 2 Superfund Site, Glendale Chromium OU, California. Purchaser shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 34 below (Resolution of Disputes Concerning Payment of Oversight Costs). If payment is not made within 30 days of Purchaser's receipt of a bill, Purchaser shall pay Interest on the unpaid balance, which shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payment(s) shall be made in accordance with Paragraphs 30.a, 31 and 32 above.

34. Pursuant to Section XIII (Dispute Resolution), Purchaser may dispute all or part of a bill for Oversight Costs if Purchaser determines that EPA has made a mathematical error or included a cost item that is outside the definition of Oversight Costs, or if Purchaser believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Purchaser shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 30.a on or before the due date. Within the same time period, Purchaser shall pay the full amount of the contested costs into an interest-bearing escrow account in a duly chartered bank or trust company that is insured by the Federal Deposit Insurance Corporation ("FDIC"). Purchaser shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 32. Purchaser shall ensure that the prevailing party in the dispute receives the amount upon which it prevailed from the escrow funds plus any interest accrued within 20 calendar days after the dispute is resolved.

XI. ACCESS/NOTICE TO SUCCESSORS/INSTITUTIONAL CONTROLS

35. Purchaser agrees to provide EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property owned or controlled by Purchaser to which access is required for the implementation of response actions at the Site. EPA agrees to provide reasonable notice to Purchaser of the timing of response actions to be undertaken at the Property and other areas owned or controlled by Purchaser. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and other authorities.

36. Commencing on the Effective date of this Settlement Agreement, Purchaser shall refrain from using the Property or allowing the Property to be used in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the removal action previously performed or the remedial measures to be performed at the Site. Such restrictions include, but are not limited to:

a. No drilling of any monitoring, extraction, injection, or other wells on the Property, without prior approval of EPA. EPA agrees in concept to the proposed drilling of a new ground water monitoring well (MW #3R) in the southeast corner of the property, provided that Purchaser submits documentation that details the planned drilling, construction and development of the new well for final review and approval.

b. No extraction of ground water from or injection of fluids into any existing wells on the Property, except with approval of EPA. Purchaser must submit for final review and approval a plan describing the procedure to be followed for abandoning groundwater monitoring well, AMP-W3 and installation of a replacement ground water monitoring well (i.e., proposed well MW #3R) in an acceptable alternative location.

c. No interference with the extraction wells, injection wells, monitoring wells (including AMP-W1, as shown on the attached diagram of the Property), vapor or ground water conveyance piping, the treatment facilities, or other components of the EPA remedy either currently installed or that may be installed on the Property (specific locations will be provided upon request), except with approval of EPA. EPA agrees in concept to the proposed abandonment of monitoring well AMP-W3 per the conditions noted in Paragraph 36.b above.

d. Maintain a clear and unobstructed area of no less than twenty (20) feet long by eight (8) feet wide in one direction around each well (including future wells) on the Property, except as provided below, and a vertical clearance of no less than approximately twenty-five (25) feet directly above each well, except with approval of EPA. Purchaser must ensure that EPA will have a safe access route across the Property to each well at all times. EPA agrees in concept to the proposed location of new monitoring well MW #3R, which includes clearance of an area of approximately eighteen (18) feet long by five (5) feet wide centered around the proposed well; and planned access through a door in the rear of the building proposed for construction on the Property. See Appendix 2.

e. Maintain the asphalt cap over the entire 30 x 30 foot area in the northeast corner of the Property near the cul-de-sac (refer to the attached diagram of the Property) with a five foot buffer (to prevent water infiltration from washing the hexavalent chromium and other metals down into the ground water) and ensure that the integrity of the cap is not compromised (i.e., conduct routine cap inspection and repair/seal cracks in the areas above the cap). EPA agrees in concept to the plan by Purchaser to replace the existing asphalt cap across the Property with a new concrete pad over the planned parking lot area in front portion of the Property along W. Spazier Avenue (including the northeast corner of the Property); and to construct a building in the back portion of the Property, provided that Purchaser submits for review and approval by EPA of a plan describing the construction details of the concrete pad and building foundation.

f. Prevent the use of a 30 to 40 foot stretch of the property along the sidewalk paralleling Spazier Avenue at the northeast corner of the property as an access point/driveway into the property (to avoid future interference with potential future remedial work), except subject to final approval of EPA. EPA agrees in concept to the plan to place an access point/driveway on the Property at a location slightly less than 30 feet (i.e., 27 feet 9 inches) from the northeast corner of the Property.

g. Provide unrestricted access for EPA (or its designees) and the State, and their contractors to the Property for sampling, cleanup and investigation activities. Such access may require modifying or suspending activities for a time to ensure a safe work area for such access.

h. Obtain written approval from EPA prior to any modification of the 30 x 30 foot cap located in the northeast corner of the Property and prior to any building construction, subsurface excavation, coring, piling, or other activities within the capped area. EPA agrees in concept to the plan to replace the existing asphalt cap with a new concrete pad over the planned parking lot area in front portion of the Property along W. Spazier Avenue (including the northeast corner of the Property) per the conditions noted in Paragraph 36.e above.

i. Obtain written approval from EPA prior to any subsurface excavation, coring, piling, or other activities at depths greater than five feet anywhere on the Property. EPA agrees in concept to the proposed drilling of a new ground water monitoring well (MW #3R) in the southeast corner of the property, provided that Purchaser submits documentation that details the planned drilling, construction and development of the new well for review and approval, per the conditions noted in paragraph 36.a above.

j. Coordinate with EPA regarding Purchaser's recent evaluation of shallow soils beneath the footprint of the planned building for potential vapor intrusion from volatile organic compounds (VOCs) to indoor air, and discuss with EPA whether implementing any actions to mitigate potential exposures to VOCs is appropriate.

k. Ensure appropriate measures are implemented during any construction to minimize potential worker exposure to soils possibly impacted by contamination.

EPA has reviewed Purchaser's construction proposal for the Property, attached hereto as Appendix 3, and finds it consistent with EPA's letter, dated August 7, 2012.

37. Within six months of the Effective Date or the date of acquisition of any Property, whichever date is later, Purchaser shall submit to EPA for review and approval an environmental restrictive covenant running with the land to be filed with the Recorder's Office, Los Angeles County, State of California, which shall provide notice to all successors-in-title that the Property is part of the Glendale Operable Unit of the San Fernando Valley Area 2 Superfund Site and limit use of the Property to commercial/industrial use. The covenant shall be in a form consistent with sample covenant attached as Appendix 4 to this Settlement Agreement. The covenantee shall be the California Department of Toxic Substances Control and EPA shall be named a third party beneficiary to the Covenant. Purchaser shall record the covenant within 60 days of EPA's approval of the covenant. Purchaser shall provide EPA with a certified copy of the recorded covenant within 10 days of recording such notice(s). The covenant will be subject to removal provided that the property is cleaned to residential standards in compliance with all applicable state and federal laws existing at the time. Purchaser agrees not to transfer, assign or sell its interest in the Property prior to the recording of a covenant running with the land, as described above.

38. Purchaser shall ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation, including compliance with any Institutional Controls. Purchaser shall ensure that a copy of this Settlement Agreement is provided to any current lessee or sublessee on the Property as of the Effective Date and shall ensure that any subsequent leases, subleases, assignments, or transfers of the Property or an interest in the Property are consistent with this Section.

39. Purchaser shall implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action.

40. For so long as Purchaser is an owner or operator of the Property, Purchaser shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Purchaser shall require that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action, and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Property.

41. Upon sale or other conveyance of the Property or any part thereof, Purchaser shall require that each grantee, transferee or other holder of an interest in the Property or any part thereof shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Purchaser shall require that each grantee, transferee or other holder of an interest in the Property or any part thereof shall implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Property.

42. Purchaser shall provide a copy of this Settlement Agreement to any current lessee, sublessee, and other party with rights to use the Property as of the Effective Date.

XII. RECORD RETENTION, DOCUMENTATION, AND AVAILABILITY OF INFORMATION

43. Purchaser shall preserve all documents and information relating to the Work, or relating to the hazardous substances, pollutants or contaminants found on or released from the Site, and shall submit them to EPA upon completion of the Work required by this Settlement Agreement, or earlier if requested by EPA.

44. Purchaser may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Settlement Agreement, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as privileged or confidential by Purchaser. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2 Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Purchaser.

XIII. DISPUTE RESOLUTION

45. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. EPA and Purchaser shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally. If EPA contends that Purchaser is in violation of this Settlement Agreement, EPA shall notify Purchaser in writing, setting forth the basis for its position. Purchaser may dispute EPA's position pursuant to Paragraph 46.

46. If Purchaser disputes EPA's position with respect to Purchaser's compliance with this Settlement Agreement or objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Oversight Costs, Purchaser shall notify EPA in writing of its position unless the dispute has been resolved informally. EPA may reply, in writing, to Purchaser's position within 15 days of receipt of Purchaser's notice. EPA and Purchaser shall have 30 days from EPA's receipt of Purchaser's written statement of position to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted orally but must be confirmed in writing.

47. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the branch level or higher will review the dispute on the basis of the parties' written statements of position and issue a written decision on the dispute to Purchaser. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Purchaser's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by

this Section, Purchaser shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XIV. FORCE MAJEURE

48. Purchaser agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Purchaser, or of any entity controlled by Purchaser, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Purchaser's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work.

49. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Purchaser shall notify EPA orally within 48 hours of when Purchaser first knew that the event might cause a delay. Within 10 days thereafter, Purchaser shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Purchaser's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Purchaser, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Purchaser from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

50. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Purchaser in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Purchaser in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

51. If Purchaser elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), Purchaser shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Purchaser shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a *force majeure* event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Purchaser complied with the requirements of Paragraphs 49 and 50 above. If Purchaser carries this burden, the delay at issue shall be deemed not to be a violation by Purchaser of the affected obligation of this Settlement Agreement.

XV. FINANCIAL RESPONSIBILITY

52. The Parties agree and acknowledge that, in the event Purchaser ceases implementation of or otherwise fails to complete the Work in accordance with this Settlement Agreement, Purchaser shall ensure that EPA is held harmless from or reimbursed for all costs required for completion of the Work. For these purposes, Purchaser shall establish and maintain Financial Responsibility for the benefit of EPA in the amount of \$100,000 (hereinafter "Estimated Cost of the Work") in one or more of the following forms, each of which must be satisfactory in form and substance to EPA:

- a. A surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. One or more irrevocable letters of credit, payable to or at the direction of EPA;
- c. A trust fund established for the benefit of EPA;
- d. A policy of insurance that provides EPA with acceptable rights as a beneficiary;
- e. A demonstration by Purchaser that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied;
- f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of Purchaser, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Purchaser; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder; or
- g. a demonstration of sufficient financial resources to pay for the Work made by Respondent, which shall include written documentation provided by the Respondent, satisfactory to EPA, that is appropriate for and commensurate with the Estimated Cost of the Work.

53. Purchaser has selected, and EPA has approved, as an initial Financial Responsibility mechanism written documentation in the form of a current bank statement of Purchaser's checking account, pursuant to Paragraph 52(g).

54. The commencement of any Work Takeover pursuant to Paragraph 61 of this Settlement Agreement (Work Takeover) shall trigger EPA's right to receive the benefit of any Financial Responsibility mechanism(s) provided pursuant to Paragraph 52(g), and at such time EPA shall have immediate access to resources guaranteed under any such Financial Responsibility mechanism(s), whether in cash or in kind, as needed to complete the Work.

55. If Purchaser desires to reduce the amount of any Financial Responsibility mechanism(s), change the form or terms of any Financial Responsibility mechanism(s), or release, cancel or discontinue any Financial Responsibility mechanism(s) because the Work has been fully and finally completed in accordance with this Settlement Agreement, Purchaser shall make this request to EPA in writing and EPA shall either approve or disapprove the request in writing.

XVI. CERTIFICATION

56. By entering into this Settlement Agreement, Purchaser certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Purchaser and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Settlement Agreement. Purchaser also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Purchaser is not materially accurate and complete, the Settlement Agreement, within the sole discretion of EPA, shall be null and void and EPA reserves all rights it may have.

XVII. COVENANT NOT TO SUE BY UNITED STATES

57. In consideration of the actions that will be performed and the payments that will be made by Purchaser under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the United States covenants not to sue or to take administrative action against Purchaser pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Purchaser of all obligations under this Settlement Agreement, including, but not limited to, payment of Oversight Costs pursuant to Section X. This covenant not to sue extends only to Purchaser and does not extend to any other person.

XVIII. RESERVATION OF RIGHTS BY UNITED STATES

58. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA or the United States from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, or from taking other legal or equitable action as it deems appropriate and necessary.

59. The covenant not to sue set forth in Section XVII above does not pertain to any matters other than those expressly identified therein. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against Purchaser with respect to all other matters, including, but not limited to:

- a. liability for failure by Purchaser to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability for violations of federal, state, or local law or regulations during or after implementation of the Work other than as provided in the Workplan, the Work, or otherwise ordered by EPA;
- e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;
- f. liability resulting from exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees; and
- g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Site.

60. With respect to any claim or cause of action asserted by the United States, Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that Purchaser has complied with all of the requirements of 42 U.S.C. § 9601(40).

61. Work Takeover. In the event EPA determines that Purchaser has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Prior to taking over the Work, EPA will issue written notice to Purchaser specifying the grounds upon which such notice was issued and providing Purchaser with thirty (30) days within which to remedy the circumstances giving rise to EPA's issuance of the notice. Purchaser may invoke the procedures set forth in Section XIII (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. After commencement and for the duration of any Work Takeover, Purchaser will remit to EPA a check, pursuant to Section XV (Financial Responsibility Section, 53), for the remaining cost of the Work, but not in excess of the Estimated Cost of the Work. Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XIX. COVENANT NOT TO SUE BY PURCHASER

62. Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Existing Contamination, the Work, Oversight Costs, or this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions, including any claim under the United States Constitution, the California Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law.

63. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XX. EFFECT OF SETTLEMENT/CONTRIBUTION

64. Nothing in this Settlement Agreement precludes the United States or Purchaser from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Settlement Agreement, including any claim Purchaser may have pursuant to Section 107(a)(4)(B). Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

65. In the event of a suit or claim for contribution brought against Purchaser, notwithstanding the provisions of Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination (including any claim based on the contention that Purchaser is not a BFPP, or has lost its status as a BFPP as a result of response actions taken in compliance with this Settlement Agreement or at the direction of the RPM), the Parties agree that this Settlement Agreement shall then constitute an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Purchaser would be entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination.

66. In the event Purchaser were found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a BFPP, or to have lost its status as a BFPP as a result of response actions taken in compliance with this Settlement Agreement or at the direction of the RPM, the Parties agree that this Settlement Agreement shall then constitute an administrative settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Purchaser has resolved its liability for all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination.

67. Purchaser agrees that with respect to any suit or claim brought by it for matters related to this Settlement Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

68. Purchaser also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement it will notify the United States in writing within 10 days of service of the complaint on it. In addition, Purchaser agrees that it will notify the United States within 10 of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

XXI. RELEASE AND WAIVER OF LIEN

69. Subject to the Reservation of Rights in Section XVIII of this Settlement Agreement, upon satisfactory completion of the Work specified in Section VIII (Work to be Performed) and payment of Oversight Costs due under Section X, EPA agrees to release and waive any lien it may have on the Property now and in the future under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by EPA in responding to the release or threat of release of Existing Contamination.

XXII. INDEMNIFICATION

70. Purchaser shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Purchaser agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Purchaser, Purchaser's officers, directors, employees, agents, contractors, subcontractors and any persons acting on Purchaser's behalf or under Purchaser's control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Purchaser in carrying out activities pursuant to this Settlement Agreement. Neither Purchaser nor any such contractor shall be considered an agent of the United States.

71. The United States shall give Purchaser notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Purchaser prior to settling such claim.

72. Purchaser waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Purchaser shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIII. MODIFICATION

73. The RPM may make minor modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

74. If Purchaser seeks permission to deviate from any approved work plan or schedule, Purchaser's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Purchaser may not proceed with the requested deviation until receiving oral or written approval from the RPM.

75. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Purchaser shall relieve Purchaser of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXIV. APPENDICES

76. The following appendices are attached to and incorporated into this Settlement Agreement.
- a. Appendix 1 shall mean Property Description
 - b. Appendix 2 shall mean Map of Property
 - c. Appendix 3 shall mean construction proposal
 - d. Appendix 4 shall mean Sample Covenant

XXV. NOTICE OF COMPLETION

77. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including continued compliance with CERCLA Section 101(40) with respect to the Property in accordance with Paragraph 5 of this Settlement

Agreement, post-removal site controls, record retention, and compliance with restrictions outlined in Paragraph 36, EPA will provide written notice to Purchaser. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Purchaser, provide a list of the deficiencies, and require that Purchaser modify the Work Plan if appropriate in order to correct such deficiencies. Purchaser shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Purchaser to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXVI. EFFECTIVE DATE

78. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice to Purchaser that EPA has fully executed the Settlement Agreement after review of and response to any public comments received.

XXVII. DISCLAIMER

79. This Settlement Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XXVIII. PAYMENT OF COSTS

80. If Purchaser fails to comply with the terms of this Settlement Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Settlement Agreement or otherwise obtain compliance.

XXIX. NOTICES AND SUBMISSIONS

81. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement Agreement, shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Submissions to Purchaser shall be addressed to:

Brett and Chris Warner Trust, dated May 31, 2012
15250 Ventura Blvd.
Suite 100
Sherman Oaks, CA 91403
Ph. 818-986-9800

Submissions to U.S. EPA shall be addressed to:

Lisa Hanusiak
Remedial Project Manager

United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105
Ph. 415-972-3152

XXX. PUBLIC COMMENT

82. This Settlement Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

The undersigned representative of Purchaser certifies that it is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party it represents to this document.

IT IS SO AGREED: BY:



Brett P. Warner, Trustee
Brett and Chris Warner Trust, dated May 31, 2012

1-20-13
Date

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BY:

Kathleen Salyer, Assistant Director
Superfund Division
California Site Cleanup Branch
EPA Region IX

Date

United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105
Ph. 415-972-3152

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Brett P. Warner, Trustee
Brett and Chris Warner Trust, dated May 31, 2012

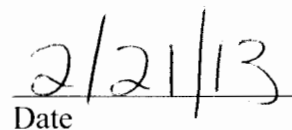
Date

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BY:




Kathleen Salyer, Assistant Director
Superfund Division
California Site Cleanup Branch
EPA Region IX

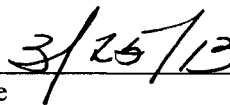


Date

IT IS SO AGREED:
UNITED STATES DEPARTMENT OF JUSTICE
BY:


IGNACIA S. MORENO

Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice


Date

APPENDIX 1

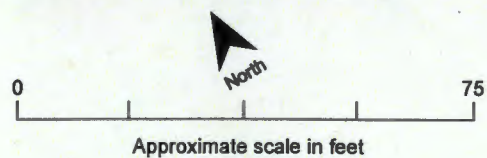
PROPERTY DESCRIPTION

264 W. SPAZIER AVE., BURBANK, CALIFORNIA

Partial Lot; Lot 39; City of Burbank, Los Angeles County, California; Tract Number 8190; NW 124 ft. of Lot 39 and that part SW of land described in OR19742-44 to the L.A. County Flood Control District of NW 124 ft ; Recorder's Map Reference: Map 87 Pg 79.

Commonly known as Assessor Parcel Number 5625-015-006.

APPENDIX 2



- ⊙ = Onsite Monitoring Wells
- = Property Fenced Area
- = 30' x 30' Area of Potential Remediation

FIGURE 1
 Site Features
 Former All Metals Processing Facility
 Glendale Chromium OU

CH2MHILL

APPENDIX 3

APR ADDRESS: 806 W. SPANISH AVENUE
MILWAUKEE, WI 53228

APR OWNER: 9820-07-00
MR. GREGG F. THOMAS
1000 WESTPARK BLVD.
SPRINGDALE, CA 95728
TEL. (916) 399-5556

FLOOR AREA: 4,362 SQ. FT. (CONCRETE AREA)
3,876 SQ. FT. (PAVEMENT SURFACE AREA)

PURPOSED TENANT: MANUFACTURING

PREVIOUS USE: YACHTS

CONSTRUCTION: 4/4 FULLY FINISHED

TOTAL PAVING REQUIRED: MANUFACTURING
MANUFACTURING / 4/4 FULLY FINISHED = 0 PARALLEL SPACES

OFFICE AREA PROVIDED: 176 SF. (ELIM. OF TOTAL FLOOR AREA)

LOADING ZONE REQUIRED: 1 DEDICATED FT. (dedicated ft.)

LOADING ZONE PROVIDED: 1 DEDICATED FT. (dedicated ft.)

TOTAL EXISTING LAND AREA: 15,168 SQ. FT.

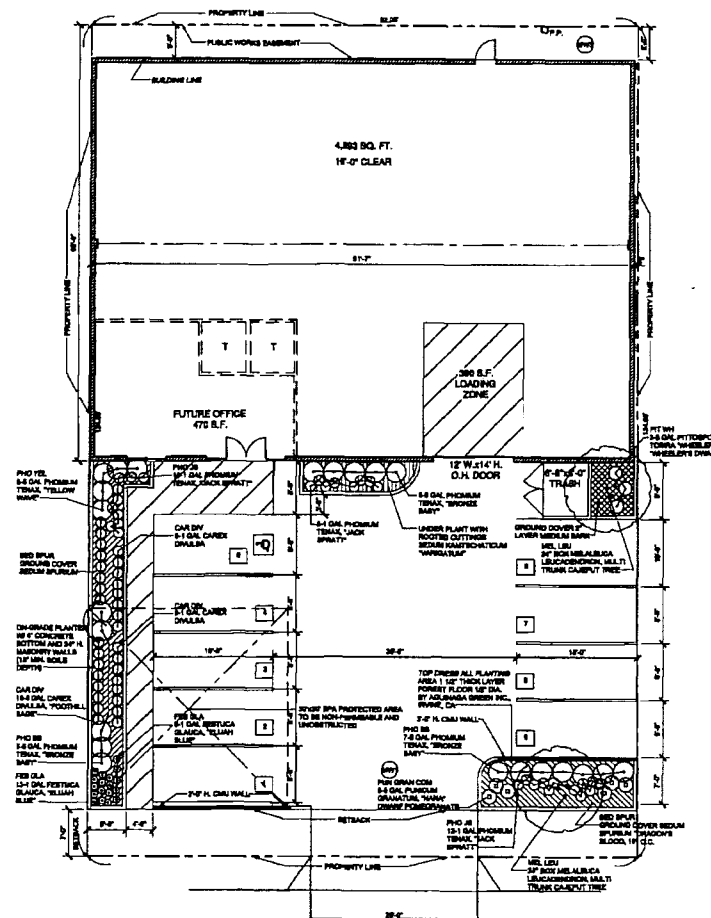
TOTAL LAND AREA AFTER 7.1% SETBACK: 5,841 SQ. FT.

NEW PAVED PARKING AREA: 3,279 SQ. FT.

LANDSCAPING REQUIRED: 1 DEDICATED FT. + 176 SQ. FT.

LANDSCAPING PROVIDED: 360 SQ. FT. (EXCESS RECENTLY ACQUIRED LANDSCAPING, BUT INCLUDES LANDSCAPING FOR THE 4/4 FULLY FINISHED PREVIOUS YEARS LANDSCAPING)

PLANT MATERIAL LEGEND				
SPERMATOPHYTES				
SYMBOL	COMMON	SCI.	BOTANICAL NAME	COMMON NAME
CE	Cedar	Lib	Libocedrus decurrens	REDWOOD
DO	Douglas Fir	Lib	Pseudotsuga Douglasii	DOUGLAS FIR
FO	Fir	Lib	Abies	FIR
LA	Larch	Lib	Larix laricina	LARCH
PI	Pine	Lib	Pinus	PINE
SP	SP	Lib	SPERMATOPHYTES	SPERMATOPHYTES
Gymnosperms				
Angiosperms				
Fungi				
Mosses				
Lichens				
Algae				
Bryophytes				
Pteridophytes				
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Pteridophytes				
Angiosperms				



SITE / FLOOR PLAN

Nakaishi Associates
Architects
Broadway Los Angeles, California 90041 Telephone (213) 212-1111



PROPOSED BUILDING FOR
MR. BRETT P. WARNER
2254 W. SPAZIER AVENUE
BURBANK, CALIFORNIA

Date: 08-08-12

Revisions	
	05-31-12 C
	06-20-12 C
	06-26-12 F
	08-05-12 F
	08-15-12 F
	08-20-12 F
	10-15-12 F
	10-22-12 F

Job No.	Time
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100	10:45

Sheet No. **A**

61

APPENDIX 4

SAMPLE COVENANT

RECORDING REQUESTED BY:

Trustee for
The Brett and Chris Warner Trust, dated
May 31, 2012
15250 Ventura Blvd.
Suite 100
Sherman Oaks, California 91403

WHEN RECORDED, MAIL TO:

ADDRESS ABOVE, and,

State of California
Department of Toxic Substances Control
[Street Address]
[City], California [zip code]
Attention: [Unit Chief]
[Unit]

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(RE: Parcel Number 5625-015-006)

DTSC Site Code [Site Code]

This Covenant and Agreement ("Covenant") is made by and between Brett P. Warner (the "Covenantor"), the current owner of property situated in Burbank, County of Los Angeles, State of California, described in Exhibit "A" and depicted in Exhibit "B," attached, (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and the Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25355.5, that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that

SAMPLE COVENANT

the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1. The provisions of this Covenant shall be for the benefit of, and shall be enforceable by, the United States Environmental Protection Agency ("U.S. EPA"), as a third party beneficiary pursuant to general contract law, including, but not limited to, Civil Code Section 1559.

ARTICLE I **STATEMENT OF FACTS**

1.01. The Property. The Property, totaling approximately 10,000 square feet, is more particularly described and depicted in the attached Exhibits "A" and "B." The Property is located at 264 W. Spazier Avenue, at the end of a cul-de-sac in a mixed residential and commercial area of Burbank. An open concrete flood control canal is located along the northeast property line. Directly to the east of the Site is an apartment complex. A graphics arts business is next door to the south. A commercial plumbing supply business is across the street to the west. Directly across the flood control channel to the north are single and multiple family residential structures. The Property is also generally described as Los Angeles County Assessor's Parcel Number 5625-015-006.

1.02. Hazardous Substances. As defined in section 25316 of the California Health and Safety Code ("H&SC"), (within Chapter 6.8, Division 20 of the H&SC), and in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") (42 USC §9601 (14)); and also Title 40 Code of Federal Regulations ("CFR") parts 261.3 and 302.4, hazardous substances remain on portions of the Property. These substances are also hazardous materials as defined in Health and Safety Code section 25260(d). These contaminant(s) include soils at depth contaminated with chromium, and other metals remaining from a former metal plating business.

1.03. Remediation of the Property. The Property will be remediated pursuant to a Record of Decision ("ROD") for the Glendale Chromium Operable Unit (GCOU) of the San Fernando Valley Superfund Site (the "Site") to be issued by the U.S. EPA, in 2015. Under the ROD, the U.S. EPA Region IX Superfund Division Director will select one or

SAMPLE COVENANT

more remedial actions for the GCOU, including the Property, pursuant to CERCLA. The Department expects to concur with the remedy.

1.04. Land Use Covenant. A land use covenant is necessary to preclude residential use of the Property given that hazardous substances currently remain and may continue to remain at the Property following completion of the remediation and to preclude disruption of the selected constructed remedy. As noted above, the ROD will provide for a land use covenant to limit future uses of the Property. U.S. EPA, with the concurrence of the Department, has concluded that the Property, when used in compliance with the terms of this Covenant, does not present an unacceptable threat to human safety or the environment.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. U.S. EPA. "U.S. EPA" means the United States Environmental Protection Agency and includes its successor agencies, if any.

2.03. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, which at any time hold title or an ownership interest to all or any portion of the Property.

2.04. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.05. CERCLA Lead Agency. "CERCLA Lead Agency" means the governmental entity having the designated lead responsibility to implement response action under the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. U.S. EPA or a state agency acting pursuant to a contract or cooperative agreement executed under CERCLA

SAMPLE COVENANT

section 104(d)(1), 42 U.S.C. 9604(d)(1), or designated pursuant to a CERCLA Memorandum of Agreement entered into under subpart F of the NCP (40 C.F.R. 300.505) may be designated CERCLA Lead Agency.

2.06 Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.07 Improvements. "Improvements" include, but are not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.08 Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.09 Remedial Systems. "Remedial Systems" shall mean the remedial equipment and systems to be located on or adjacent to the Property.

ARTICLE III

GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth Environmental Restrictions, that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. This Covenant: (a) Runs with the land pursuant to Health and Safety Code section 25355.5(a) and Civil Code section 1471; (b) Inures to the benefit of and passes with each and every portion of the Property; (c) Is for the benefit of, and is enforceable by the Department; and (d) Is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all Owners and Occupants of the Property. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

SAMPLE COVENANT

3.03. Incorporation into Deeds and Leases. The Covenant and its Environmental Restrictions shall be incorporated by reference in each and every deed and lease for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference DTSC site code [~~list DTSC site code~~]. The notice shall also include the Assessor's Parcel Number ("APN") listed in Section 1.01. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

ARTICLE IV
RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- a. A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- b. A hospital for humans.
- c. A public or private school for persons under 21 years of age.
- d. A day care center for children.

4.02. Soil Management. Any contaminated soils or contaminated materials brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of State and federal law. Such soils and materials shall not be removed from the Property without a Soil Management Plan approved by the Department.

SAMPLE COVENANT

4.03. Prohibited Activities. Unless a change is authorized pursuant to Article VI of this Covenant, the following conditions and restrictions apply unless prior written approval of modifications to the following conditions and restrictions is obtained from the CERCLA Lead Agency:

- a. No drilling of any monitoring, extraction, injection, or other wells on the Property, without prior approval of EPA. EPA has agreed in concept to the proposed drilling of a new ground water monitoring well (MW #3R) in the southeast corner of the property, provided that Purchaser submits documentation that details the planned drilling, construction and development of the new well for final review and approval.
- b. No extraction of ground water from or injection of fluids into any existing wells on the Property, except with approval of EPA. Purchaser must submit for final review and approval a plan describing the procedure to be followed for abandoning groundwater monitoring well AMP-W3 and installation of a replacement ground water monitoring well (i.e., proposed well MW #3R) in an acceptable alternative location.
- c. No interference with the extraction wells, injection wells, monitoring wells (including AMP-W1, as shown on the attached diagram of the Property), vapor or ground water conveyance piping, the treatment facilities, or other components of the EPA remedy either currently installed or that may be installed on the Property (specific locations will be provided upon request), except with approval of EPA. EPA has agreed in concept to the proposed abandonment of monitoring well AMP-W3 per the conditions noted in Paragraph 4.03.b above.
- d. Maintain a clear and unobstructed area of no less than twenty (20) feet long by eight (8) feet wide in one direction around each well (including future wells) on the Property, except as provided below, and a vertical clearance of no less than approximately twenty-five (25) feet directly above each well, except with approval of EPA. Purchaser must ensure that EPA will have a safe access

SAMPLE COVENANT

route across the Property to each well at all times. EPA has agreed in concept to the proposed location of new monitoring well MW #3R, which includes clearance of an area of approximately eighteen (18) feet long by five (5) feet wide centered around the proposed well; and planned access through a door in the rear of the building proposed for construction on the Property.

e. Maintain the asphalt cap over the entire 30 x 30 foot area in the northeast corner of the Property near the cul-de-sac (refer to the attached diagram of the Property) with a five foot buffer (to prevent water infiltration from washing the hexavalent chromium and other metals down into the ground water) and ensure that the integrity of the cap is not compromised (i.e., conduct routine cap inspection and repair/seal cracks in the areas above the cap). EPA has agreed in concept to the plan by Purchaser to replace the existing asphalt cap across the Property with a new concrete pad over the planned parking lot area in the northern half of the Property along W. Spazier Avenue (including the northeast corner of the Property); and to construct a building in the southern half of the Property, provided that Purchaser submits for review and approval by EPA of a plan describing the construction details of the concrete pad and building foundation.

f. Prevent the use of a 30 to 40 foot stretch of the property along the sidewalk paralleling Spazier Avenue at the northeast corner of the property as an access point/driveway into the property (to avoid future interference with potential future remedial work), except subject to final approval of EPA. EPA has agreed in concept to the plan to place an access point/driveway on the Property at a location slightly less than 30 feet (i.e., 27 feet 9 inches) from the northeast corner of the Property.

g. Provide unrestricted access for EPA (or its designees) and the State, and their contractors to the Property for sampling, cleanup and investigation activities. Such access may require modifying or suspending activities for a time to ensure a safe work area for such access.

SAMPLE COVENANT

- h. Obtain written approval from EPA prior to any modification of the 30 x 30 foot cap located in the northeast corner of the Property and prior to any building construction, subsurface excavation, coring, piling, or other activities within the capped area. EPA has agreed in concept to the plan to replace the existing asphalt cap with a new concrete pad over the planned parking lot area in the northern half of the Property along W. Spazier Avenue (including the northeast corner of the Property) per the conditions noted in Paragraph 4.03.f above.
- i. Obtain written approval from EPA prior to any subsurface excavation, coring, piling, or other activities at depths greater than five feet anywhere on the Property. EPA has agreed in concept to the proposed drilling of a new ground water monitoring well (MW #3R) in the southeast corner of the property, provided that Purchaser submits documentation that details the planned drilling, construction and development the new well for review and approval, per the conditions noted in paragraph 4.03.a above.
- j. Coordinate with EPA regarding Purchaser's recent evaluation of shallow soils beneath the footprint of the planned building for potential vapor intrusion from volatile organic compounds (VOCs) to indoor air, and discuss with EPA whether implementing any actions to mitigate potential exposures to VOCs is appropriate.
- k. Ensure appropriate measures are implemented during any construction to minimize potential worker exposure to soils possibly impacted by contamination.

4.04. Non-Interference with Remedial Systems.

- a. The Owner and Occupant shall not participate in or allow any activity that would interfere with the operation of the Remedial Systems or other Site-wide response activities at the Property without prior written approval from the CERCLA Lead Agency, such approval not to be unreasonably withheld.

SAMPLE COVENANT

- b. All uses and development of the Property shall preserve the integrity of the Remedial Systems or other Site-wide response activities.
- c. Owner shall provide a copy of this Covenant to all easement holders for all or any portion of the Property.

4.05. Access for the Department and U.S. EPA. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities for the Remedial Systems on the Property consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment. Nothing in this instrument shall limit or otherwise affect U.S. EPA's right of entry and access, or U.S. EPA's authority to take response actions, under CERCLA; the National Contingency Plan, 40 Code of Federal Regulations Part 300 (1997) and its successor provisions; or federal law. Nothing in this instrument shall limit or otherwise effect the Department's right of entry and access, or authority to take response actions, under CERCLA; the National Contingency Plan, 40 Code of Federal Regulations Part 300 (1997) and its successor provisions; Chapter 6.8, Division 20 of the California Health and Safety Code; California Civil Code, or other applicable State Law.

4.06 Access for Implementing Operation and Maintenance. The entity, person or persons responsible for implementing the operation and maintenance activities related to the Remedial Systems shall have reasonable right of entry and access to the Property for the purpose of implementing these operation and maintenance activities. Such right of entry and access shall continue until such time as the CERCLA Lead Agency determines that such activities are no longer required.

4.07 Inspection and Reporting Requirements. The Owner shall conduct an annual inspection and submit an Annual Inspection Report to the Department for its approval by January 15th of each year. The annual report shall describe how all requirements outlined in this Covenant have been met. The annual report, filed under penalty of perjury, shall certify that the Property is being used in a manner consistent with this

SAMPLE COVENANT

Covenant. The annual report must include the dates, times, and names of those who conducted and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual report (e.g., drive by, fly over, walk in, etc.). If violations are noted, the annual report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must, within ten (10) days of identifying the violation: determine the identity of the party in violation; send a letter advising the party of the violation of the Covenant; and demand that the violation cease immediately. Additionally, copies of any correspondence related to the enforcement of this covenant shall be sent to the Department and U.S. EPA within ten (10) days of its original transmission.

ARTICLE V

ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department shall be grounds for the Department to pursue administrative, civil or criminal actions.

5.02 Enforcement Rights of U.S. EPA as a Third Party Beneficiary. U.S. EPA, as a third party beneficiary, has the right to enforce the Environmental Restrictions contained herein.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Owner, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233 and a copy of the application shall be submitted to U.S. EPA simultaneously with the application submitted to the Department. No variance may be granted under this paragraph without prior notice to and an opportunity to comment by U.S. EPA.

6.02 Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or modification of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234 and a copy of the application shall be submitted to U.S. EPA simultaneously with the application submitted to the Department. No termination may be granted under this paragraph without prior notice to and opportunity to comment by U.S. EPA.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, after providing notice to and an opportunity to comment by U.S. EPA, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication or Taking Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever. Further, nothing in this Covenant shall be construed to effect a taking under State or federal law.

SAMPLE COVENANT

7.02. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Brett and Chris Warner Trust, dated May 31, 2012
 15250 Ventura Blvd.
 Suite 100
 Sherman Oaks, California 91403

To Department: Department of Toxic Substances Control
 Attention: **[Unit Chief]**
 [Unit]
 [Street Address]
 [City] CA [zip code]

To the U.S. EPA: U.S. Environmental Protection Agency
 Region IX
 Attention: Lisa Hanusiak¹
 75 Hawthorne Street
 San Francisco, CA 94105-3901

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.03. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant, or the application of it to any person or circumstance, shall remain in full force and effect as if such portion found invalid had not been included herein.

7.04. Statutory and Regulatory References. All statutory and regulatory references include successor provisions.

¹ Or current remedial project manager for San Fernando Valley Area 2 Superfund Site, Glendale Chromium Operable Unit.

SAMPLE COVENANT

7.05. Incorporation of Attachments. All attachments and exhibits to this Covenant are incorporated herein by reference.

7.06. California Law. This Covenant shall be governed, performed and interpreted under the laws of the State of California.

7.07. No Delegation. Nothing set forth in this Covenant shall be construed to be a delegation of any authorities of DTSC under any statute or regulation.

SAMPLE COVENANT

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor:

By: _____ Date: _____

Trustee for the Brett and Chris Warner Trust, dated May 31, 2012

Department of Toxic Substances Control

By: _____ Date: _____

[Unit Chief)

[Unit)

Department of Toxic Substances Control

SAMPLE COVENANT

EXHIBITS

A – LEGAL PROPERTY DESCRIPTION

B – SURVEY MAP

[If non-interference with the remedy is included as part of the LUC, an exhibit depicting the location of the remedy components (Cap, wells, SVE system, etc.) should also be included and referenced appropriately (e.g. Exhibit C)]

SAMPLE COVENANT

**Exhibit A
Legal Property Description
Property Subject to Environmental Restriction**

SAMPLE COVENANT

**Exhibit B
Survey Map
Property Subject to Environmental Restriction**

SAMPLE COVENANT

State of California

County of _____

On _____ before me,

(here insert name and title of the officer/notary),

Personally appeared _____

_____, personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

SAMPLE COVENANT

State of California

County of _____

On _____ before me,

(here insert name and title of the officer/notary),

Personally appeared _____

_____, personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)